

CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - MARCH 7, 2001

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, and Mayor/Chairman Kennedy.
Council/Agency Member Tate was available via teleconference for the 6:00 p.m.
closed session item.

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSION:

City Attorney Leichter announced the following closed session item:

CONFERENCE WITH LABOR NEGOTIATORS

Legal Authority: Government Code section 54957.6

Agency Negotiators: City Manager, Human Resources Manager, City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the closed session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to closed session at 6:03 p.m.

RECONVENE:

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT:

City Attorney Leichter announced that no reportable action was taken on the above listed closed session item.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Glenda Garcia led the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Chang reported that last Tuesday, a meeting was held by the South County Regional Wastewater Authority. It was stated that the hearing for the expansion of the plant capacity of 7.5 to 8.5 MGD would be extended until July 2001. She indicated that she attended a Redevelopment Agency conference last week, noting that City Manager Tewes was the Chairman for the event. Peter Schrag, editor of the Sacramento Bee, addressed infrastructure and the energy crises. Leon Panetta and a professor in attendance addressed the conflict between suburban and high density growth/housing affordability. Another speaker addressed housing prices in the bay area.

CITY MANAGER'S REPORT

City Manager Tewes reported that City staff has begun the budget process and that the City Council would be receiving the budget recommendations on May 16. Thereafter, staff will recommend a series of workshops and public hearings.

CITY ATTORNEY'S REPORT

City Attorney Leichter reported that the monthly Litigation Summary has been distributed, noting that a new case has been added to the Litigation Summary: Adriana Juarez et al. v. City of Morgan Hill. She indicated that there were no other changes to the litigation list.

PUBLIC COMMENTS

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on the agenda. No comments were offered.

Mayor Kennedy announced that on Thursday, March 8, 2001 at 7:00 p.m., the YMCA would be conducting a fundraiser telethon and that the event would be televised. He requested that the community support the local YMCA.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Carr and seconded by Council Member Chang, the City Council, on a 4-0 vote with Council Member Tate absent, **approved** Consent Calendar Items 1-9 as follows:*

1. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9036, KENDALWOOD PH. II SUBDIVISION - Resolution No. 5458**

Actions: 1) **Adopted** Resolution No. 5458, Accepting the Subdivision Improvements Included in Tract 9036, Commonly Known as Kendalwood Ph. II, and 2) **Directed** the City Clerk to

File the Notice of Completion with the County Recorder's Office.

2. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9109, KENDALWOOD PH. III SUBDIVISION - Resolution No. 5459**
*Action: 1) **Adopted** Resolution No. 5459, Accepting the Subdivision Improvements Included in Tract 9109, Commonly Known as Kendalwood Ph. III, and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*
3. **FINAL MAP ACCEPTANCE FOR MISSION RANCH PH. IV (TRACT 9210)**
*Actions: 1) **Approved** the Final Map, Subdivision Agreement and Improvement Plans, 2) **Authorized** the City Manager to sign the Subdivision Improvement Agreement on behalf of the City, and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*
4. **PURCHASE OF PUBLIC WORKS VEHICLES AND EQUIPMENT**
*Actions: 1) **Authorized** Vehicle Purchase Through the State of California General Services Procurement Process for the Vehicle Identified for a Total Cost of \$106,393.45, 2) **Authorized** Purchase of a "Jet-A-Way" Easement Sewer Cleaning Machine for a Total Cost of \$20,502.72, and 3) **Authorized** Purchase of a Vehicle Transceiver Radio Read Unit with Computer for a Total Cost of \$25,380.*
5. **AMENDMENT TO ANNUAL MAINTENANCE CONTRACT WITH SALINAS PUMP COMPANY, INC. FOR WELL MAINTENANCE**
*Actions: **Approved** the Amendment to the Agreement Dated August 3, 2000, to Increase Maximum Compensation from \$30,000 to \$60,000.*
6. **APPROPRIATION OF ADDITIONAL FUNDS FOR CORP YARD FUEL LEAK CLEANUP**
*Action: **Appropriated** \$133,300 from Fund Balances as Identified in The Report to Fund the Fuel Tank Clean-up Efforts for the Remainder of This Fiscal Year.*
7. **APPROVAL OF PROFESSIONAL SERVICES AGREEMENT FOR RIGHT-OF-WAY ACQUISITION FOR EXTENSION OF BUTTERFIELD BOULEVARD FROM SAN PEDRO TO TENNANT**
*Actions: **Authorized** The City Manager to Execute a Professional Services Agreement with Cutler & Associates, Inc. in the Amount of \$24,000 for Right-of-way Acquisition for the Extension of Butterfield Boulevard from Tennant Avenue to San Pedro Avenue.*
8. **INTER-REGIONAL PARTNERSHIP GRANT**
*Action: **Support** Inter-Regional Partnership Grant.*
9. **JOINT SPECIAL CITY COUNCIL AND SPECIAL GENERAL PLAN TASK FORCE MEETING MINUTES OF FEBRUARY 22, 2001**
*Action: **Approved** the minutes as written.*

PUBLIC HEARINGS:

10. PREZONE APPLICATION: ZA-00-16: WEST EDMUNDSON-PINN

Council Member Chang stepped down from discussion of agenda item 10 due to a possible conflict of interest.

Mayor Kennedy announced that the application would be tabled this evening following the receipt of public testimony. He opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Carr and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Tate absent, **tabled** application ZA-00-16: West Edmundson-Pinn.*

Council Member Chang resumed her seat on the dais.

OTHER BUSINESS:

11. MEDICAL SERVICES FOUNDATION

Mayor Kennedy indicated that the report from the Medical Services Committee (Committee) has been distributed this evening. He noted that the Committee consists of him; Mayor Pro Tempore Sellers; Bernie Mulligan, chairman of the Blue Ribbon Task Force Committee; City Manager Tewes; and City Attorney Leichter. He stated that two meetings were held in order to establish the criteria for the selection of members to the organizing committee of the new Morgan Hill Community Health Foundation.

Mayor Pro Tempore Sellers stated that at the last Council meeting, there was discussion about the value of an organizing committee. It was determined that it made sense to go directly to an organizing committee as an interim step due to the fact that there would be initial activities that need to be undertaken immediately. The formation of an organizing committee would assist in the effort of getting things done. The Committee discussed the size of the organizing committee and it was agreed that it would be appropriate to have seven voting members on the organizing committee, including two ex-officio members. The Committee feels strongly that the members of the organizing committee need to have very specific areas of expertise. If the organizing committee is not set up properly, it could severely limit opportunities in the future. He felt that a strong organizing committee would provide greater assurance to the public that this is a broad community-based effort and would give independence to an effort that makes sense.

Mayor Pro Tempore Sellers indicated that the Committee is recommended that the organizing committee be appointed at the Council's March 21 meeting. The Committee is seeking concurrence from the entire City Council on the criteria make up of the organizing committee. In the intervening two weeks, recommendations would be taken from every council member and members from the community of individuals who should be considered for appointment to the organizing committee. It is further being recommended that two exofficio Council members be appointed in a non voting

capacity due to legal reasons and practical issues, allowing independence. He read through the 8 criteria to be considered as a member to the organizing committee. He identified the levels of experience being sought in members of the organizing committee as follows: medical services expertise, CEO or senior corporate manager, legal expertise, corporate finance, real estate, fundraising expertise, and community leaders. It is expected that all members appointed to the organizing committee would understand the importance of fundraising. It is being suggested that Council members identify potential organizing committee members by March 14 in order to have the ability to consider these recommendations prior to the March 21 meeting. It is further recommended that the organization committee meet as soon as possible, once appointed, as there is a lot of work and that has to be performed quickly. The organizing committee is to appoint an interim executive director and undertake a fundraising feasibility study as soon as possible.

Mayor Kennedy stated that at the last Council meeting, the City Council appointed him and Mayor Pro Tempore Sellers to develop a criteria. This was as a result of a decision that was made some time ago by the City Council to commence with the formation of a Medical Services Task Force to create a Morgan Hill medical/health foundation. The Committee is recommending that the title of the foundation be the Morgan Hill Community Health Foundation (Foundation). He stated that it is the goal of the Committee to make the Foundation self supporting and a free standing entity, independent from the City. The City would have two non voting members on the ultimate board. It is the general belief that the organizing committee would get the process under way with an interim executive director helping in the process. The permanent foundation board would select its permanent executive director and establish its bylaws. The Committee is recommending that two council members, the Mayor or his designee and one other council member, be appointed to the Foundation with an alternate Council member being appointed should the appointed council members not be able to attend a particular meeting. It is his hope that each council member would identify individuals in the community with the areas of expertise and qualities being sought and bring these names back to the Committee for consideration so that the individuals can be interviewed. The committee would return to the City Council with a recommended list of members to be appointed to the organizing committee. He indicated that the Committee will continue working on an interim set of bylaws and return with these bylaws on March 21.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Chang felt that the Committee's report was an excellent proposal.

Action: *Council Member Chang made a motion, seconded by Council Member Carr, to **accept** and **file** the report and to **Authorize** the Committee to prepare a list of recommended appointees. The preliminary report to be prepared and distributed in the agenda packet by March 16 with the final selection to be scheduled for the March 21 meeting.*

Council Member Carr noted that the staff report states that the Committee was asked to return with an analysis on whether the City Council should appoint a convening committee or a permanent board. Based on the report presented this evening, the Committee is recommending a convening committee. He asked if the 7 voting and 2 non voting members are strictly for the convening

committee or would this number also apply to the governing board of the Foundation?

Mayor Kennedy responded that the 7 voting and 2 non voting members are strictly for the organizing committee. With respect to the exofficio non voting members of the Council, it is being proposed that the Council retain the same criteria of non voting Council members on the permanent board.

City Attorney Leichter stated that the draft bylaws identify the criteria for the organizing board. They could equally be applicable to the permanent board. She recommended that the Council seek the input of the organizing board as they work through the process to see if they feel that these are the appropriate qualifications. It could be suggested that there be a different board make up for the organizing board versus the permanent board. In terms of Council continued participation on the board, she indicated that the current bylaws, as drafted, would allow the Mayor or his designee and one additional council member to serve on the Board as non voting members. The same criteria could also apply to the permanent board.

Mayor Pro Tempore Sellers said that once the organizing committee is underway, they can make changes as they see fit. He felt that autonomy has been given to the organization as it needs latitude.

Council Member Carr requested clarification as to whether these are suggested bylaws with the organizing board adopting the bylaws with changes, if deemed appropriate.

City Attorney Leichter stated that there are a couple of ways under the non profit corporations laws that this could be structured. The Council could state to the organizing board that these are the bylaws under which they are organized. She cautioned the Council that each step that it takes in direct involvement may subject the committee to certain legal considerations. An alternative to this is to have the organizing board return to the City Council with proposed amendments to the bylaws so that the Council would have the ability to approve the permanent bylaws. Once the permanent board of directors is in place, they would be entitled and would want to have the freedom to enact their own bylaws.

Mayor Kennedy stated that the Council has expressed a strong interest in protecting the public good by the role that it has taken. He recommended that the Council keep the exofficio non voting members of the Council as part of the organizing committee. He encouraged the relationship to continue due to bad experiences that have occurred in other jurisdictions.

Mayor Pro Tempore Sellers recommended that further consideration be given to the City Attorney's idea of having the organizing committee review and approve the bylaws. He recommended that the Committee return with a recommendation on who is to approve the bylaws.

City Attorney Leichter cautioned the City Council that by continued steps of involvement, the Council may be subjecting the organizing committee to the Brown Act.

Council Member Chang asked if the appointments to the organizing board could be scheduled for April 4 in order to allow her to be in attendance. She indicated that she would not be in attendance

at the March 21 meeting.

Mayor Kennedy stated that it is being suggested that the organizing committee hold their first meeting on March 22 in the interest of keeping the process moving.

Council Member Sellers stated that it is being recommended that council members submit recommendations to the Committee by March 14. He stated that he was anxious in getting this process underway and keeping the appointment to the organizing committee on the March 21 agenda. If there are any questions about members or other issues of concerns, the Council could defer consideration for a week.

Mayor Kennedy inquired if there was a way that the City could contact Council Member Chang? City Attorney indicated that the Brown Act provides that she can participate via telephone and/or computer e-mail.

Council Member Sellers recommended that the Committee be allowed to make preliminary recommendations by March 16 and allow Council Member Chang to review the recommendations. Council Member Chang would then have the opportunity to address her concerns before she leaves.

Council Member Carr stated that he was in agreement with having a preliminary slate of possible members to the organizing committee by March 16, if feasible, noting that this is the first opportunity that the Council has had to review the criteria for appointment to the organizing board. He was not sure the Council would perform a level of investigation and get individuals to commit by the March 16 date.

Mayor Kennedy stated that a preliminary slate can be reviewed by March 16 and would still allow the addition/revision of members based on the preliminary slate. He indicated that the Committee wants to get the process moving as time is of the essence.

Council Member Chang requested that she be appointed to the board.

Council Member Carr agreed that time is of the essence and suggested that the process move forward. He asked if there was a definition to the area suggested under criteria B7 which states that an individual would have to reside or have a place of business within the area served by the Foundation?

Mayor Kennedy responded that the Committee wanted to keep criteria B7 somewhat open ended. The thought was to cover south San Jose, Morgan Hill, San Martin and the surrounding areas. He indicated that the Committee did not want to restrict the criteria to the City of Morgan Hill but to extend the criteria to nearby areas.

Council Member Carr supported as much flexibility as possible under criteria B7. He noted that there are suggested "shoulds" that the organizing committee do as soon as possible. However, it is not specifically stated that the organizing committee is to appoint a foundation Board of Directors. He asked if the organizing committee would have the final say in appointing the foundation Board

of Directors?

City Attorney Leichter clarified that the bylaws are drafted to allow the organizing board to elect the permanent Board of Directors. Should the Council wish to have whatever level of input into this process that it desires, the draft bylaws could so be amended. In terms of time, the bylaws have been structured such that the organizing board's natural life cycle ends in six months or when they receive notice of tax exempt determination from the Internal Revenue Services.

Council Member Carr expressed concern with the timeline, especially if the tax exempt status returns in a short time period. He felt that it was important to start the organization, appoint the governing board and get off on the right foot. He agreed that the urgency exists to get the organizing board started as soon as possible. However, he expressed concern about imposing a timeline that is 90 days down the road. He recommended that the Council be given updates to determine if the investment that the city is making is being used properly and on the right track.

Mayor Pro Tempore Sellers indicated that there will be a period of time during which the organizing board will be considering the bylaws. If the organizing board decides that they need additional time to make permanent appointments, they can modify the bylaw, if appropriate.

City Attorney Leichter said that the organizing committee could amend the draft bylaws if the City Council affords them this flexibility. The organizing committee could amend the timeline if it is felt that this is too quick a timeframe. She indicated that the articles of incorporation have been sent to the Secretary of State for filing. Therefore, the foundation will become an entity as soon as the Articles of Incorporation are filed. She clarified that the bylaws are separate and is an internal action to the organizing board.

Bernie Mulligan, Chairman of the Blue Ribbon Task Force Committee, informed the City Council that he would be occupied from March 15 - 18 but that he would make time to interview candidates.

Council Member Carr clarified that the City Council is suggesting bylaws to the organization board and that the organizing board would have the ability to review them and make changes as necessary. The timelines and the number of members to the governing board are to be worked out by the organizing board. He stated his concurrence with the recommendation that the organizing committee has areas of expertise. He wanted to make sure that the organizing committee feels that they have been given enough leeway by the Council to allow them to make some of the judgements based on their research. He felt that the way that the foundation starts would be the most important aspect.

Mayor Kennedy stated that the organizing board would be an arms length removed from the City Council so that they do not fall under the requirements of the Brown Act.

Vote: *The motion carried 4-0 with Council Member Tate absent.*

City Council & Redevelopment Agency Action

CONSENT CALENDAR:

Mayor Pro Tempore/Agency Member Sellers recommended that Consent Item 12 be considered separately as it directly impacts him and that he would have to abstain.

Council/Agency Member Chang indicated that her business is located within 500 feet of the project for agenda item 12.

Action: *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Chang, the City Council/Agency Commission, on a 4-0 vote with Council/Agency Member Tate absent, **approved** Consent Calendar Items 13 and 14 as follows:*

13. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF FEBRUARY 21, 2001

Action: ***Approved** the minutes as written.*

14. JOINT REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF FEBRUARY 21, 2001

Action: ***Approved** the minutes as written.*

12. ACCEPTANCE OF THE EL TORO AVENUE STREET AND UTILITY REPLACEMENT PROJECT

City Attorney/Agency Counsel Leichter noted that both Council/Agency Members Chang and Sellers have declared a conflict of interest. Therefore, she stated that the City would evoke the Rule of Necessity and that a coin be flipped to determine who would participate.

It was noted for the record that Council/Agency Member Chang won the "flip of the coin." Therefore, Council/Agency Member Sellers stepped down from discussion of agenda item 12.

Actions: *On a motion by Council/Agency Member Carr and seconded by Mayor/Chairman Kennedy, the City Council/Agency Commission, on a 3-0-1 vote with Mayor Pro Tempore/Agency Member Sellers abstaining and Council/Agency Member Tate absent, **approved** the following actions:*

Redevelopment Agency Action:

1. ***Appropriated** \$15,467.71 from Current Year Unappropriated RDA Non-housing Fund to Complete the Funding for This Project.*

City Council Action:

1. ***Accepted** as Complete the El Toro Avenue Street and Utility Replacement Project in the Final Amount of \$536,425.71, and*
2. ***Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

Mayor Pro Tempore/Agency Member Sellers resumed his seat on the dais.

CLOSED SESSION:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Legal Authority: Government Code 54956.8 & 54956.9(c) (1 potential case)
Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of
Road (St. Louise Hospital property)
City Negotiators: Agency Members; Executive Director; Agency Counsel; and F. Gale
Conner, special counsel
Closed Session Topic: Potential Litigation

2.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code section 54956.9(c) (one case)

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION:

Mayor/Chairman Kennedy adjourned the meeting to closed session at 8:12 p.m.

RECONVENE:

Mayor Kennedy reconvened the meeting at 10:14 p.m.

CLOSED SESSION ANNOUNCEMENT:

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on the above listed closed session items.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:15 p.m.

MINUTES RECORDED AND PREPARED BY:

Irma Torrez, City Clerk/Agency Secretary